
PEERS DAVIDSON, M.A.

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Figure 1 displays a sequence of 16 small images arranged in a 4x4 grid. The images show a progression from a dark, noisy pattern on the left to a clear, structured image of a person's face on the right. The progression is from left to right and top to bottom.

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DOCTORS AND THE LAW.

BY

PEERS DAVIDSON, M.A.

Of the Montreal Bar.

It does not come within the scope of this paper to discuss the respective origins of medicine and law nor to compare the professions one with the other, as might be inferred from the foregoing heading. The law, deriving its origin from the relations between the members of the primeval family and of the village community, protects and safeguards the individual by defining his rights and duties. It to that extent therefore protects the person. Medicine, on the other hand, I use the term in its widest sense, has a more intimate relation with the person, inasmuch as by saving and protecting human life, it assists in enabling the individual to continue to enjoy the rights preserved by the law. Both seek the preservation of society, but in widely different manners. It does not follow however that they are upon an equality. Communities have lived without medicine. Law in some form or other is indispensable to their existence. Hence the latter is always the superior, though from its nature medicine may be the more noble. While the medical profession therefore, may be governed by its own rules and ethics, they do not and cannot effect society as a whole. Notwithstanding and irrespective of them, doctors are governed by the law, as fully and as absolutely as other members of society. Owing however to their intimate relations with the "person" of the individual, legal questions of unusual interest and difficulty arise.

So essential has the medical profession made itself to society and its immunity from disease, so valuable has its science become for the detection of crime, that its members may frequently be viewed in the light of public officers. The conflict between public and private duty is frequent cause of perplexity to them. In this paper, it is not my intention to discuss what may be termed Legal Medicine, or Medical Jurisprudence. That is a subject for the doctor rather than the lawyer. That is medicine as applied to law. I propose to deal with law as applied to doctors, to discuss the position of the doctor as respects the law—his personal rights and liabilities, as he performs some of his varied professional duties. He occupies a distinct place in society. Society, in virtue of statutory or common law places upon him certain obligations in addition to those of an ordinary member of it.

The subject is a broad one and difficult of condensation within the limits of a paper suited to the occasion. I shall briefly deal with the following principal subjects. The Doctor as a Witness, His duty in relation to Acts of Status, His Civil Responsibility and His Criminal Responsibility. For convenience I have placed these under four chapters.

CHAPTER I.

THE DOCTOR AS A WITNESS.

(a) *The Subpœna.*

Every person is compelled to appear before the Civil Courts, whenever a copy of writ of subpœna is served upon him at least one clear day before that fixed for his examination, this delay of one day being increased at the rate of one day for every fifteen miles when the distance exceeds fifteen miles. (C. P. 297). If he does not obey the subpœna he is liable to a fine of not exceeding \$40.00. Independently of this, the party who summoned him may have damages for his default and imprisonment for contempt, if it lie. (C. P. 303). If, however, he must disburse something to arrive at the place of examination he is under no obligation to obey the subpœna unless a reasonable amount is tendered to him at the time of its service.

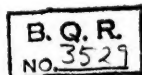
(b) *The Doctor as a Witness on Matters of Opinion.*

He can only be summoned "to declare what he knows or produce some document in his possession, or do both." (C.P. 298). It would therefore appear, under the law, that he cannot be compelled to testify as to a matter of opinion. The public have no right to demand a man's services as an expert unless he consents thereto. They have, however, the right to demand his evidence upon facts which have come to his knowledge, no matter by what means. It is not for him to judge, whether he can testify to facts in the particular case or not. It frequently happens that amid the complications of facts and names in a busy man's daily life he completely forgets the facts, until reminded of them in the witness box. If he wishes therefore to avoid the possibility of a fine he must obey his subpœna and after ascertaining in open court that only his opinion is desired, he may refuse to give it unless his terms are complied with.

Once put upon the stand as a skilled witness his obligation to the public ceases and he stands in the position of any professional man consulted in relation to a subject upon which his opinion is sought. It is evident that the skill and professional experience of a man is so far his individual capital and property, that he cannot be compelled to bestow it gratuitously upon any party. Neither the public, any

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more than a private person, have a right to extort services from him in the line of his profession, without adequate compensation. On the witness stand, precisely as in his office, his opinion may be given or withheld at pleasure, for a skilled witness cannot be compelled to give an opinion, nor be committed for contempt if he refuses to do so. Whoever calls for an opinion from him in chief, is under obligation to remunerate him, since he has to that extent employed him personally; and the expert at the outset may decline giving his opinion until the party calling him either pays, or agrees to pay him for it. When, however, he has given his opinion he has now placed it among the *res gestes* of the evidence, and can not decline repeating or explaining it on cross-examination. Once uttered to the public ear of the court, it passes among the facts in evidence, and counsel may use it as they please, without any further compensation to him. The point of declining to give it gratuitously must be made, if at all, at the opening of his examination in chief, and will avail him nothing if delayed until the cross-examination. He has been called to be consulted in open court by somebody and from that party alone has he a right to claim a compensation for his services (Ordronaux. Med. Jurisp., ¶ 114, 115).

The medical witness is not permitted to read his text-books in the witness box. But he may refer to them to refresh his memory (Roscoe's Cr. Ev. p. 137. Taylor Evid. vol. 2, p. 946. Ordonaux Med. Jurisp. par. 122). In cross-examination however, quotations from well known authors may be read by counsel and the witness asked whether he agrees or disagrees with them.

It is not within the scope of this paper to discuss the bearing and conduct of the doctor in the witness box. That is a matter rather for a doctor to discuss than a lawyer. But it may be my duty to refer in passing to the loss of prestige which expert evidence is daily suffering. I do not say that it is confined to the medical profession. It is caused by the apparent ease with which contradictory expert evidence and more particularly medical evidence, may be obtained. Medical men may reply that they are led astray by the legal profession. No doubt there is some force in the argument. Lawyers naturally will take advantage of any tendency which for the time being will militate in their favour. The predisposition to disagree is as strong among medical men as among the legal fraternity. I do not think the inaccuracies of science are altogether to blame. The popular distinction however remains between the "liar, the d—d liar and the expert," and the sooner its cause is removed the better. It seems to me that the only practical solution of the difficulty would be a law

requiring a board of experts to be appointed by the court in each instance independent of and above the influence of either side. (Ordronaux, Med. Jurisprudence, ¶ 114, 115).

(c) *The Doctor as a Witness on Matters of Fact.*

If he be a witness of fact he can claim no privilege but is compelled to answer all questions put to him relevant to the matter at issue, no matter whether he has obtained the information professionally under the pledge of secrecy or otherwise. (C. P. 332, Browne vs. Carter, C. S., Berthelot, J., 1865, 9 L. C. J. 163). In this respect he is not accorded the same favour as the clergy, lawyers and notaries. If he be in doubt as to the relevancy of the question, or as to whether he should answer it he may appeal to the presiding judge, whose decision he must accept without question. (Taylor, Med. Jurisp. p. 29). If he be in good faith and without malice he need not fear the consequence of his evidence, no matter how prejudicious it may be to the reputation of the party. Justice demands that he should give all his information on all points at issue, absolutely without reservation. Justice protects him from the consequences thereof and declares it to be a privileged communication. (C. R. Labbe vs. Pidgeon, 1 R. de J. 135; R. J. Q. 7 S. C. 27). It is not for him to inquire into the regularity of the proceedings, as for instance a Coroner's inquest. (*Id.*).

(d) *Fees for Evidence in Civil Matters.*

It sometimes happens, I regret to say, that medical men are compelled to attend at court for hours at a time before their evidence is taken, the small fee for such attendance by no means repaying them for their loss of time. It is rarely, however, that physicians cannot make some arrangements with the lawyers who subpoena them, to give their evidence at a fixed hour. The professional tax amounts to four dollars a day. Lawyers, doctors and engineers are all in the same position. I know it is a matter of complaint among medical men, that they are unable to ascertain what is due them and even unable to collect this amount, when ascertained. I may say, that it is the custom, if a witness has attended even for a few minutes in the morning and has left on ascertaining that he would not be required, to tax him for one half day. If he again attends in the afternoon with the same result, it is the custom to tax him for the whole day. He is ordered by his subpoena to attend from day to day until heard.

On leaving the box finally, his proper course is to at once ask the clerk for taxation. He will ask him how many days and half days he has attended and he is permitted to reckon them upon the principle above

laid down. The clerk may swear the witness as to his attendance if either party demands it. The judgment when, rendered, condemns one or the other of the parties to pay the costs. The taxation of a witness is a judgment against the party who called him and may be executed like one, irrespective of the lawyers (C. P. 336). Application should be made to the lawyer who summoned the witness. If the application is unsuccessful the witness may at once apply to the clerk for an execution.

(e) Fees in Criminal Matters.

Under a special Order in Council, the following is the tariff for expert witnesses in criminal matters.

Residents of the Cities of Montreal and Quebec for each complete day of attendance at court.	\$10 00
Residents of the Cities of Montreal and Quebec for any part of a day.	5 00
Residents of any other city for each complete day of attendance at court.	8 00
Residents of any other city for any part of a day.	4 00
“ “ any other part of the Province for each complete day of attendance.	5 00
Residents of any other part of the Province for any part of a day. .	2 50
For mileage when the distance travelled exceeds two miles, ten cents per mile each way.	

For each day not exceeding three days, occupied in whole or in part in the study of any subject, question or matter ordered by the Judge, the Attorney-General or his representative and upon which professional evidence is subsequently to be given in court. \$5.00

This tariff applies to all criminal trials.

If called by the defence, the doctor must take his chances of collecting from the defendant and usually they are very slim. As a rule however, he is called by the defence on matters of opinion and he can then protect himself by refusing to answer until his fee is paid.

(f) Proof of Account of Services Rendered.

It sometimes becomes necessary for the physician to sue for his fees. This action must be taken within five years from the last payment on account. Special exception is made in favour of the physician or surgeon enabling him by his own oath to make proof as to “the nature and duration of the services.” Under this law up to this year there has been some conflicting jurisprudence on the question as to whether the physician could also prove the fact of the services having been rendered. The practice has of late years been to permit him to do so. However, a statute of the last session of the Legislature (60 Vic. cap. 54) enabling all parties to make proof in their own behalf in all cases, both disposes of this question and renders obsolete the special exception in favour of the medical profession.

CHAPTER II.

THE DOCTORS' DUTY IN RELATION TO ACTS OF STATUS.

Questions may arise as to the duty of doctors respecting acts of birth and acts of burial.

(a) Acts of Birth.

In France the law charges certain persons, such as fathers, mothers and doctors, or midwives, or any other person who may have been present at the accouchement to declare the birth to the authorities.

In the Province of Quebec there is no such obligation upon any person save the father and mother.

(b) Acts of Burial.

It is different, however, respecting Acts of Burial. The provincial act concerning Compilation of Vital Statistics (56 Vic. cap. 29, sec. 3059e) provides that every physician who has been called upon to render professional services during the last sickness of any deceased person shall under his hand, certify to the death and cause of death of such person, giving the name and surname, age, sex, nature of profession or calling, date of death, duration of illness and cause of death. Such certificate must be required by the keepers of the registers of burial, for example the cemetery authorities, before proceeding to the burial or granting the burial permit."

Under this section, physicians should be careful to give such a certificate, only when they have been called to give their professional services during the *last illness* of the deceased person. Otherwise they may certify to facts on hearsay evidence, thereby causing themselves subsequent trouble and annoyance. Under the amendment to the City Charter however (59 Vic. cap. 50 sec. 17 b) it is provided that: "In all cases of death occurring in the city, a certificate be deposited in the health office, and that such certificate be made in the form and manner determined by the Board of Health and the Council. It would therefore appear that the medical man had to give two certificates of death in each instance. However, by Order-in-Council of the 29th September, 1896, doctors are relieved from the duty of giving a certificate to the Provincial Board of Health as required by 56 Victoria, but must conform to the City Regulations which are practically the same.

In this connection, Art. 69 of the Civil Code is of interest. It reads as follows: "When there is any sign or indication of death having been "caused by violence or when there are other circumstances which "give reason to suspect it, or the death happens in any prison, asylum "or place of forcible confinement, the burial cannot be proceeded with

"until it is authorised by the coroner or other officer whose duty it is to inspect the body in such cases.

What is the duty of a doctor then, civilly speaking, when he finds himself face to face with any sign which indicates death by violence or when there are other circumstances which give reason to suspect it?

In the first place, what is violent death?

Worcester defines it to be that "produced by force or violence, not naturally." Taylor on Medical Jurisprudence (vol. I, p. 166) enumerates the various causes of "violent death" as being "poisoning, wounds and personal injuries, such as burns and scalds, as well as those forms of death which commence by the lungs, including drowning, hanging strangulation and suffocation." In his discussion of these forms he includes the *medical operation*. (See also Lacassagne, *Médecine Judiciaire*, p. 102). Hence all deaths resulting from either accidental or criminal acts and even from medical operations are violent deaths in the meaning of the law and the deceased cannot be interred until his interment is authorised by the coroner.

It should be clearly understood that there is no law placing upon medical men the obligation to notify the coroner in cases of violent death. It is therefore evident that a failure to notify him does not beget a civil liability.

The physician may give his certificate, which in all cases he should be careful is absolutely exact, and throw the onus of informing the coroner upon the authorities who, by law, are prohibited from permitting the burial. In practice, however, with this ultimate result in view, physicians will usually consider it more convenient both for themselves and the relatives of the patient to at once notify the coroner. If the violent death be traceable in some measure to medical treatment it is in the interest of the physician himself to place the matter clearly before the coroner and thus avoid future possible misunderstanding.

CHAPTER III.

CIVIL RESPONSIBILITY.

Under this general term arise the great majority of questions in connection with the relations between medical men and the outside world, in the course of their daily practice. The word "responsibility" practically means in general, under the French law, "the obligation to repair a damage." (Villargues' *Dict. de Dr. Civ.*)

(a) *The Doctors' Civil Responsibility for the Betrayal of the Professional Secret.*

The majority of the questions which arise under this head, do so in relation to the observation or breach of the professional secret. They

are questions into which enter considerations of private interest, professional etiquette, public policy and the interests of society. So conflicting are the divers interests which must be considered, so varied are the circumstances under which the different questions arise, that it is exceedingly difficult to lay down a general principle for all cases. I propose, however, to discuss these questions one by one and shall attempt to solve as many of them as may be possible.

In France, the question is to a certain degree simplified by the existence of a section in the Penal Code of which the following is a free translation. (Art. 378, C. Penal). "Doctors, surgeons and other health officers, as well as midwives, pharmacists and all other persons, the receivers, either by status or profession, of secrets which people confide to them, who, save in cases in which the law obliges them to inform, shall have revealed secrets, shall be punished by an imprisonment of one month to six months and to a fine of from 100 francs to 500 francs." You will note the exception "save in cases which the law obliges them to inform."

This article of the Penal Code is only the legislative enactment of the old French law and jurisprudence on the subject. (Merlin Rep. vo. Médecine; id, vo. Chirurgie; id, vo. Apothécaire; Dareau, *Traité des Injures*, t. I., p. 87).

The betrayal of a professional secret is by the French considered to be a penal offence which according to their ideas, is midway between a civil and criminal offence. The Penal Code laying down this principle, the civil law applies it to civil cases. When by its infraction a medical man causes damages he is deemed to be in fault.

In the State of New York (Rev. Stat., 5th Ed. vol. 3, p. 690) "no person duly authorized to practice physic or surgery is allowed to disclose any information which he may have acquired in attending any patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon." According to this legislation the doctor is not to disclose his professional secret even in the witness box or in Criminal matters, unless there be exceptions in other statutes which I have been unable to find. Similar legislation exists in other States of the Union.

There is no such legislation in England or in the Province of Quebec.

The questions respecting professional secrets which arise in either country must be decided according to the common law in one instance and the principles of our code and of the old French law in the second.

It is curious to note that the sections respecting physicians and surgeons in the Revised Statutes make no mention of this important

matter. This is a contrast to the sections respecting notaries, (R. S. Q. 3622) which require them to keep secret the confidences made to them professionally and (R. S. Q. 3608) which places them under the safeguard of the law in the performance of their professional duties. Apparently under the Revised Statutes, the Board of Governors of the College of Physicians and Surgeons has no power to make rules beyond those respecting studies, examinations, credentials, etc., registry of names and rules and regulations for the general management of the corporation.

Apart from the oath of Hippocrates, administered to him by his own profession, the doctor is under our law quite free to disclose his professional secret, save in so far as he may render himself liable in damages for his act.

I propose to show how this legal liability arises.

From the moment of the consultation a contract of hire exists. This contract is subject to the tacit condition that the information given to the doctor by the patient, which is necessary to enable him to prescribe for such patient or do any act for him as a surgeon, shall be kept in strict confidence. This condition ceases to exist under certain circumstances which I shall discuss later. It owes its existence to the fact that the members of the medical profession by the rules which govern them, hold themselves out to the world as confidential advisers. It has also the sanction of public opinion and policy, which in fact lend to it its main strength.

Under our law, the breach of a condition in a contract renders the one in fault liable in damages under the following article of the Code. (C. C. 1053). "Every person capable of discerning right from wrong "is responsible for the damage caused by his fault to another, whether "by positive act, imprudence, neglect or want of skill.

It will be noticed that the provisions of the law thus laid down are very broad and general in their terms. The doctor is responsible for damage caused by his fault, whether by imprudence, neglect or want of skill.

In view of the express legislation in France we must depend upon the general interpretation of the above article, with such assistance as the English law may afford.

In England the general principles of the common law may be found laid down in the famous case of *Kittson vs. Playfair* tried last year. Probably no case for many years has excited such interest among physicians throughout the world, on account of the prominent position of the doctor involved and the tremendous damages of \$60,000 awarded. Doctor Playfair was no doubt placed in a trying position. He had

discovered, as he believed in good faith, that a lady, a relative and connection of his by marriage, had been guilty of immoral conduct in the absence of her husband. He considered himself under the necessity of either breaking his professional oath or of permitting this woman to intimately associate with other members of his family. His desire to protect his wife and daughters was the stronger impulse as it would be with many other professional men, and I think justifiably so. It was quite possible for him and would be quite possible for any other medical man under the circumstances not only to have observed his professional oath, and at the same time protect his family life. All that was necessary for him to have said to his wife was, "I have reasons for desiring you to cease receiving this woman and desire that she no longer associate with my daughters," cautioning his wife to attain this end discreetly. Had he gone no further than this it is difficult to conceive how the law could have reached him in any way. He was, however, completely carried away by his personal feelings and went beyond the bounds of prudence and necessity. He first wrote to the unfortunate woman, informing her of his suspicions and threatening that, unless she at once left London, he would expose her and cause the withdrawal of her allowance by another branch of the family. He was obdurate to her pleading letters for a further hearing. He finally not only told his wife of his suspicions in detail but wrote them to a relative who was granting this woman an allowance, advising him to withdraw it, which he did. I do not see how, under the circumstances, any court could fail to condemn not only a medical man, but any individual for such a series of acts. The fact that the information so utilised was obtained under the obligation of professional secrecy rendered the offence all the more glaring in appreciating the damages.

At the trial he pleaded privilege, but not the truth of his assertions, That question came up only incidentally.

As indicating the points at issue the following were the findings of the jury :

"That Dr. Playfair believed the words to be true, but did not give the plaintiff an opportunity of making an explanation ; that the words were not uttered in good faith and without malice ; and that the words were not uttered from a mere sense of duty, but from an indirect motive."

The general principles of the law on this question in France, England and here are practically the same, with the exception that the old French law in force in this Province and as expressed in the

section 1053 of the Code, above quoted, is much more severe in its appreciation of facts giving rise to damages, than the English law.

Before discussing particular questions, I would lay down a general rule respecting professional secrecy.

The physician is at all times bound to observe the confidences of his patient on pain of a condemnation in damages, with the following exceptions :

1. When he has been expressly relieved of his obligation by his patient.

2. When he is ordered by the court to answer as a witness.

3. When the rules of the Board of Health demand it.

4. When it is necessary to free himself from the danger of being held to be an aider and abettor of a crime or an accessory after the fact.

5. When an ordinarily prudent man, may in good faith, without malice or exaggeration consider it to be his duty to society or to himself

The first three exceptions require no further comment. The fourth will be explained by a discussion of the criminal aspect of the matter which I treat of later.

The exception under which the physician finds the greatest difficulty is the last, that is as to when he may consider it his duty to society or to himself to divulge his patient's secret and does so without liability in damages.

I do not enter into a discussion of the struggle between the physician and the man, which is bound to ensue. I only treat the question on the presumption that he is prepared to lay aside professional scruples. I presume that he has determined that it is his duty to speak, but hesitates for fear of possible damages.

Our courts would consider the truth of the doctor's assertions, his clear and over-riding moral duty, his good faith and absence of malice, and the fact that he only divulged the secret as a last resort. As the matter always resolves itself to a matter of "right to damages," the doctor, keeping the above considerations in mind, should be able to appreciate the risk he runs and whether the moral and social duty is sufficiently great to incur it.

You will recognise with me the impossibility of imagining every variety of circumstance and of going far beyond general principles, upon so difficult a question. I shall however, discuss one or two of the more important questions which may arise.

(1) Before Marriage.

Take for instance the case of a patient who has been treated by a doctor for some virulent disease and who is about to be married, notwithstanding his physician's protests. If the lady is unknown to the

medical man the question is not likely to arise with the same force, as he will probably be less prompted to go out of his way to prevent the marriage. In fact he would have no opportunity of preventing it without a glaring breach of professional secret. If the lady, however is within the immediate circle of his acquaintance there are numerous ways which may suggest themselves to him, by which he can bring about the same result without breaking confidence. Dr. Bruardel in his remarkably interesting treatise on "Le Secret Medical" gives an ingenious method. The father of the intended bride being a friend of his, he one day called his attention to the death of a young husband who left his wife entirely without means, and to the fact that had the young man held a policy of insurance, his wife would have been provided for. The consequence was that the father of the fiancée at once requested the intending bridegroom to take out a policy of insurance on his life and upon his inexplicable refusal, as it appeared to the father, the match was broken off. In neither of these cases do I think that the doctor would be justified in a breach of confidence.

It is presuming an extreme case, but within the range of possibility that the lady about to marry be a member of the physician's own family. In such a case I cannot conceive it possible that a court of justice would condemn a medical man for protecting his child to the fullest extent of his power even if it be necessary to disclose to her the true facts of the case as a last resort. The obligations and the duties of the parent rise transcendentally above all considerations of professional duties, of etiquette or of public policy.

As the relationship or connection with the medical man lessened, I would consider him less justified in breaking professional confidences to prevent the marriage; and, when once he left the close relationship of father and daughter he would have to take his chances of the appreciation of the tribunal of the whole circumstances of the case.

(2) *During Marriage.*

Delicate legal questions also arise as to the duty of the doctor, when, after marriage, the consorts are individually his patients. It would seem that the professional secret should be observed in this instance as strictly as the circumstances of the case may require, but I do not think that owing to the intimate relations and confidences between husband and wife and the remote possibility of one or the other being able to claim damages, that the doctor has frequent cause for perplexity.

(3) *In Reference to Minors and Domestic*

The question of professional secret also occasionally arises in reference to minors and domestics.

In these cases the persons who demand information as to the illness from which the person is suffering and to whom the physician is inclined to give the information, are the parents and guardians in the one case and the master of the servant in the other.

There is no question that the duty of the doctor is in either case to disclose the nature of the illness if it is a contagious nature. That comes within the exception as to the rules of the Board of Health. But if the disease be non-contagious and of a disreputable character, he should have considerable hesitancy in doing so.

The argument recited in books, which discuss the question, is that he who pays for the services of the physician rendered to another party, be he a minor or domestic, is entitled to full information. I do not think that such individuals are so entitled. For the information is obtained by the doctor from the patient, not because this third party has paid for the services, but solely in faith of the physician's professional obligation of secrecy and to enable him to perform his duties properly.

Of course, where there may be the difficult question between the obligation to preserve the confidence and at the same time respect the rights of the individual who has the welfare of the minor in charge, the physician must determine according to the circumstances of the case, and should be governed largely by what he considers to be the best interest of both parties. He should be careful that by his communication the minor does not suffer damage, of which in this class of cases there would be only a remote possibility.

It is more difficult, however, in the case of a domestic or servant. The physician should be extremely careful. If he is called in by the master to treat the servant whom he finds to be suffering from any ailment which she might under the circumstance object to be known by her master, her associates or the public, he cannot inform the person who employed him without rendering himself liable to an action in damages, unless there be a danger of contagion, which he is unable to at once remove by causing the removal of the servant.

(4.) In an Action for Professional Services Rendered.

The question is also discussed in the text-books as to whether the physician can sue for his fees, if by so doing he would have to divulge professional information of a damaging character to the defendant. It has been held in this Province that a doctor has not the right to publish in an account for professional services, the nature of the disease for which he claims the price of his services, when such publication is of a nature to injure his debtor (5 Q. L. R., p. 267).

I am not disposed to agree with some medical writers on this point who appear to be of the opinion that the doctor should forego his fees under such circumstances. There is certainly no necessity for him to do so under our system. He may take his action simply for professional services rendered. (Dareau, *Traité des Injures*, Tome I., p. 87). If the action be contested he need not give evidence beyond the facts that professional services were rendered on certain dates and for certain lengths of time and that they were of certain value. He may throw the onus upon the defendant himself to elicit, if he chooses, the nature of the services and thus bring the matter within one of the exceptions above noted. The fact that the defendant so demanded this information would free the doctor from the obligation of keeping it secret. The question is not likely to arise frequently, as a patient who wishes to conceal the disease will do all in his power to prevent the matter going to court. On the other hand, a physician will not sue an individual who is not able to pay.

(b.) The Doctor's Civil Responsibility for Negligence, Imprudence and Want of Skill.

The physician is responsible, as I have said, for his fault, negligence, imprudence or want of skill. The doctor who acts within the limits of his art with a conscientious opinion of the excellency of his system incurs no responsibility. The law determines the grades by which one acquires the title of doctor, but it submits the exercise of medical art to no control. He who has obtained degrees from a medical faculty is legally presumed to have the necessary capacity. Thus the practice of medicine from a scientific point of view can bring with it no responsibility. But when a grave fault or neglect can be imputed to the doctors, responsibility exists. The surgeon who performs an operation in a state of intoxication is responsible for the consequences; so, too, if he has not properly arranged the bandages; so, too, if he commits a material and damaging or fatal error in his prescription or is guilty of other grave neglect or ignorance. A doctor would not be submitted to an action by the fact alone that he might have been deceived. He might, however, be responsible for giving an unaccustomed prescription, taking chances as to its efficacy. The court would, however, have to carefully distinguish between carelessness or empirical audacity and the confidence of a savant or a man of genius. For it has been the experience in the past on many occasions that such men have been a generation in advance of their time. The courts would have to carefully consider the reasoning and grounds for belief upon which the physician based his treatment

hitherto unknown or but slightly known to medical science. (Dalloz Vo. Responsabilité No. 128).

In accordance with this principle it has been decided in France that the obstetrician who without necessity amputated the two arms of a child in order to deliver the mother, can be held responsible in damages (id. No. 129).

It is to be noted that in order to legally perform a surgical operation the doctor should be authorised by the patient or by the person under whose authority he may be. The operation should never be performed without this authorisation, save in cases of urgency. But it is not necessary, nor is it customary, that the doctor should give the patient a thorough knowledge of the technical details of the operation. It is sufficient for him to simply term it a surgical operation for such and such a purpose. The burden of proof as to the consent of operation is upon the doctor. (Dalloz, J. G., 1891, Vo. Responsabilité-Médecine).

The doctor is under no obligation to answer every call, but having undertaken to attend any individual he is responsible for damages which may be caused by his subsequent unjustified refusal. It is not likely that such a question would arise (id 131).

(c.) The Doctor's Civil Responsibility for Confidential Conversation.

The doctor may sometimes find himself embarrassed by the confidential question as to the standing of a fellow practitioner. It has been held "that a statement made by a person in the course of a private conversation with his family physician is privileged, particularly where there is no proof of malice (Sinn v. Marcus, 6 R.J.O.S.C. Tait, J., 1896)." It has been also held "that a doctor who expresses "in good faith, at a ball, to a friend who consults him in passing, his "opinion against a secret and new treatment adopted by a *confrère* for "the delivery of women without pain, and who cites a case in which "a woman had died after undergoing this treatment, referring at the "same time for details to a third doctor called to this delivery, cannot "be held for slander, because this conversation is privileged." It was "also held "that a letter on the subject of such conversation, written "by the defendant in reply to a letter from the plaintiff, which asked "him from whom he received this information, is also a private and "privileged confidence" (DeMartigny vs. Mount, 21 R. L. 461, Pagnuelo, 1891, S. C.)

The principle followed was that slander in order to be punishable should be public. (Nouveau Denizart, Vo. Diffamation, par. 2, No. 1). Thus what two people in conversation tell each other they think of a

third party would not render them liable for slander, as a result of natural liberty which all men possess of communicating their thoughts to those whom they deem worthy of it, save always professional confidence. (See also in the same sense *Tellier J., S. v. D.*, 18 R. L. 132.) A decision, which appears contradictory to this general line of jurisprudence is as follows (*DeCow v. Lyons*, R. J. Q. 4, S. C. 341) : A druggist on being asked by a customer as to the professional position of the plaintiff, a doctor, replied that he had heard that he had tapped a woman for dropsy, when as a matter of fact she was pregnant. The Superior Court held that this conversation was privileged, but this decision was reversed in Review on the ground that it did not come within the duty of the druggist to give such information to his customer, and that the information was not only untrue, but he was officious in giving it. He had never verified its truth, nor even attempted to do so.

The decision was given upon the principle that the communication between individuals even though in good faith must be fair and impartial without exaggeration or the introduction of irrelevant or calumnious matters. If then a physician is asked by a patient as to the status or the experience and skill of another physician in a special branch, he must be careful only to say what is necessary for the guidance of his patient in making a choice, and, if it be necessary to enter into details, to be reasonably certain that his information is correct.

CHAPTER IV.

THE DOCTOR'S CRIMINAL RESPONSIBILITY.

In relation to the Criminal Law the medical man undergoes some responsibility.

(a) *For Operations and Medical Treatment.*

The strictest guardian of the honour of the profession must admit that there are times when death ensues from medical or surgical treatment. It is inevitable that strength and vitality, and the physical effect of drugs and surgical operations are sometimes miscalculated and that as a consequence death results. On this point the text of the Criminal Code is clear. (Cr. Code Sec. 57). It reads as follows : " Every one is protected from criminal responsibility for performing " with reasonable care and skill any surgical operation upon any " person for his benefit, provided that performing the operation was " reasonable, having regard to the patient's state at the time, and to " all the circumstances of the case."

Section 212 is also applicable : " Every one who undertakes (Except " in case of necessity) to administer surgical or medical treatment, or

"to do any other lawful act, the doing of which is or may be dangerous to life, is under a legal duty to have and to use reasonable knowledge, skill and care in doing such act and is criminally responsible, for omitting without lawful excuse, to discharge that duty if death is caused by such omission."

The only charge within the range of possibility against the doctor under these sections of the law is "Manslaughter," *i. e.*, the killing of a human being without malice aforethought, or in other words, by reason of criminal ignorance, neglect or want of skill. Under the Criminal Code then there are three essentials to protect the physician:

1. Reasonable care.
2. Reasonable skill and knowledge.
3. A reasonable operation in view of the patient's state at the time, and all the circumstances of the case.

Notwithstanding the high character of the medical profession in this city and notwithstanding the improbabilities of an operation without the above requirements, it may at any time happen to a surgeon, that ignorance or spite on the part of a third party may be the cause of laying an information for manslaughter when the operation has resulted in death. It is therefore a wise principle to adopt in all cases of doubtful operations to call in a consultant and perform the operation with his approval. This precaution should be observed even by the leader of his profession.

(b) The Doctor's Responsibility for Participation in or Concealment of Crime.

As I above intimated, we find the professional secret in its relation to the Criminal Law as well. In this domain however, it is not so much a question of responsibility, for that can be guarded against, but one concerning the physician's conscience. I believe that there is no profession in the world that observes its obligations and its rules of etiquette with greater sincerity and severity than the medical profession. When therefore they are face to face with what they must feel to be a public obligation upon all men to assist in the detection of crime, they are in a position of extreme difficulty. The question arises more particularly in connection with abortion, poisoning and services to the criminal subsequently to his crime. In France the Criminal Code (Art. 30) requires that "Every person who may have been a witness of an attempt against the public safety, whether against life or property, should give notice of it to the public prosecutor." We have no such law.

The doctor is however impelled to give information respecting

crime which has come to his notice during his professional work by two impulses comprised within two of the exceptions above given.

The first is : The impulse to free him from the danger of being held to be an aider and abettor of a crime or an accessory after the fact.

The second is the impulse to protect society from crime and to punish the criminal.

Under our law the distinctions between principals of the first and second degree, and between accessories before the fact are done away with ; and *all* are expressly made principals or parties to, and equally guilty of an offence who : (*a*) actually commit it : (*b*) who do or omit anything to help its commission : (*c*) who abet or assist at its commission, or (*d*) who counsel or procure its commission. (Crankshaw, Cr. Code, Sec. 61 and 62).

If therefore the physician is face to face with an attempted poisoning, or he has strong suspicions of such, but continues his treatment attempting to cope with its results, and does not seek to remove the cause, he will find himself placed in a dangerous position legally, and an uncomfortable position professionally.

The conclusions are much the same in cases of abortion. The gentlemen of the profession, of higher standing, whom I am now addressing, at times called in in consultation as a last resort, to save the unfortunate woman, do not consider the risk of the criminal law which they incur. They act in good faith and to save a fellow being, but at the grave risk of being technically considered a principal in the crime. They should remember always that they are guilty in the eyes of the law if they assist in the slightest degree, even from purely professional motives and that their failure to inform must raise the presumption of criminal intent.

“ An accessory after the fact to an offence is one who receives, comforts or assists any one who has been a party to such offence in order to enable him to escape, knowing him to have been a party thereto.” (Cr. Code Sec. 63). They are not considered as principals and are tried separately.

One does not become accessory after the fact by merely neglecting to inform the authorities that a crime has been committed, or by forbearing to arrest the offender. (1 Hale, P. C., 618, 619). The test of an accessory after the fact seems to be that he renders the principal offender some active personal help to enable him to escape punishment, as, by furnishing him with money or food to support him in hiding, or by supplying him with a horse to enable him to fly from his pursuers, or a house or other shelter to conceal him in, or by using

open force and violence to protect him. (1 Bishop, New Cr. L. Com. p. 422; 4 Bl. Com. 38.)

It is therefore evident that a doctor runs no risk of a criminal charge by tending the wounds of a murderer, or receiving and tending him in ordinary course in a hospital, and yet remaining silent. Nor is he liable if he tends and heals a woman suffering from the effects of an abortion, *already completed*, nor again a would be suicide. He should, however, exercise great caution that he commits no overt act to protect or conceal the offender, nor defeat the attempts of the officers of justice to find him or her. When requested he should be careful to give them all information which can assist them.

I do not think that it comes within the scope of this paper to discuss the question, whether the doctor should give information respecting crimes and attempts at crimes, which he obtains in his professional capacity, when he is in no danger under the criminal law or as respects his professional reputation. That is not only a question of Medical Ethics, but also a question of morals. It does not come within the domain of a legal discussion. The medico-jurists discuss the question pro and con at great length and with great diversity of opinion. Some fine distinctions are made. For instance, Trebuchet in his "*Jurisprudence de la Medicine*," thinks that in cases of abortion the doctor should be silent if it be apparently a first offence, and if an honourable family would be ruined by the disclosure. But that if the crime be committed upon a woman of low character by persons who make a practice of it they should inform. On the other hand, Mr. Justice Hawkins in his charge in the *Kitson vs. Playfair* case, considered it a "monstrous" thing to inform in either case, of course provided the doctor personally ran no risk by his silence. In this matter, however, doctors must take into serious consideration how far they render this crime the more prevalent and easy of accomplishment by their silence.

The same remark applies to the case in which they possess most valuable information for the authorities when striving to discover the perpetrator of a dastardly crime. The authors are rightly at one in considering it a paramount duty of the medical man, transcending all others, to inform when by doing so he is able to save the life of a fellow being.

In all these cases a doctor incurs no liability for damages. He should first be certain of his facts and reasonable in his suspicions and act in good faith and without malice. There is, under no circumstance, necessity to lay a public information in the Police Court. A confidential and private conversation with either of the Police Magistrates is sufficient. The doctor has fulfilled his duty to the public

and to society in every respect by throwing upon them the responsibility of further investigation and a criminal prosecution. In the latter he appears simply as an ordinary witness under order of the Court.

There is no more noble profession than the practice of medicine. To heal the sick is a divine mission. Medical men, the world over are famous for their charity, high ideals and great earnestness of purpose to benefit the human race. But they have at times to look beyond the immediate circle of their efforts and realise that they are at the same time simple members of that great complex whole—Society, which demands for its existence, the assistance of one and all of us.

CHAPTER V.

THE DOCTOR'S RESPONSIBILITY, IN REFERENCE TO INSANITY.

Having been requested to supplement a paper on "Doctors and the Law," which lately appeared in this journal, by a chapter on "Insanity" in the same connection, I gladly do so.

The doctor's relation to insanity is two-fold. (1) His services are always required in the confinement of the insane for the protection of society. (2) His expert evidence is necessary to support a plea of "insanity" from the criminal's dock.

(1) *The Protection of Society.*

The end is attained in two ways: (a) By Confinement in Asylums, and (b) By Interdiction.

(a) *Confinement in Asylums.*

The Revised Statutes of Quebec, Articles 3182, seqq., with their amending acts 52 Victoria, chapter 35; 53 Victoria, chapter 41; 54 Victoria, chapter 29; 55-56 Victoria, chapter 30; 56 Victoria, chapter 31; 57 Victoria, chapter 33; 60 Victoria, chapter 38, provide the necessary formalities. As I fear they would prove somewhat a quagmire for the non-legal enquirer, I shall give in some detail those portions which are of interest to the general medical practitioner.

Asylums are Public and Private. There are also what are termed "Unlicensed Houses."

Public Asylums are those which are under the control and supervision of the Government. They are in this Province, the St. Jean de Dieu at Longue Pointe, Verdun, and Beauport, near Quebec. Private Asylums are under its supervision only. (54 Victoria, chapter 29, s. 4; 57 Victoria, chapter 33, s. 1.) Private Asylums are those licensed by Justices of the Peace, assembled in General Sessions. Unlicensed houses do not possess the same powers of detention and privileges as the above.

Two physicians' certificates are essential to the admission of a patient to any one of them, save in the case of an Unlicensed House. In the latter case one certificate suffices, "under special circumstances," provided the second is furnished within three days after admission.

The certificates must be signed by medical men, who are neither partners nor brothers, nor in the relation of father and son to each other, to the proprietors of the asylum or to the patient, and who have each, separately and personally, examined the patient before the application for his entry into the asylum. (57 Victoria, chapter 33, s. 6).

The form of certificate for admission to a Public Asylum is as follows:

PHYSICIAN'S CERTIFICATE.

PLACE AND DATE.

I, _____, being a physician duly authorized to practice and habitually practising as such, do declare on oath that I am not related to, nor as respects the proprietors of _____ asylum, within the conditions prohibited by law, concerning insane asylums, nor with (name of the person making the application) nor with (name of the patient).

That I have this day, separately from any other medical practitioner, visited and personally examined the said _____; that the said _____ is insane and is a proper person to be confined, and that I have formed this opinion from the following facts, which I certify to be true (give the details).

Sworn before me at _____ } (Signature)
 this _____ day of _____ 189 .) M.D.
 (Signature)

Quality.

N.B.—(In cases of idiocy or imbecility state whether the idiot or imbecile be dangerous, a cause of scandal, or subject to epileptic fits, and mention the facts which show that he is dangerous or a source of scandal (57 Vic., cap. 33, s. 6).

In addition a form containing the following questions must be filled in. Relatives and friends must assist by giving information:

1. What is the patient's age to the best of your knowledge?
2. Is the patient married or single? If married, how long? How many children?
3. Where do these children live?
4. What is the patient's origin?
5. Are his parents still living? Where do they live? What is their name?
6. Where does the patient come from?
7. In what municipality was he when sent to the asylum?
8. How long has the patient resided in Canada?
9. What has been the patient's occupation or trade? If a female, that of her husband and father?
10. What are his apparent means of subsistence, as well as of those who are obliged by law to support him?
11. What is the patient's religion?
12. What degree of education? Can he read and write?
13. When did the first symptoms of sickness manifest themselves?
14. How were the first symptoms of disease manifested?
15. Is this the first attack? If not, when did the others occur, and what was their duration?
16. Is there any improvement or aggravation in the disease or is it stationary?
17. When did the first symptoms of the present attack manifest themselves?
18. Has the patient any lucid interval, and do they occur at regular periods?
19. On what subjects, or in what way is derangement now manifested? Is there any permanent hallucination of sight, taste, touch or genital sense?
20. Has the patient shown any disposition to injure himself or others?
21. Was it from sudden passion or premeditation?
22. Has suicide ever been attempted? If so, in what way? Is the propensity now active?
23. What are his habits as to

eating, sleeping or cleanliness? Is there a disposition to filthy habits, destruction to clothing, breaking glass, furniture, &c.? 23. What relatives (including grandparents and cousins) have been insane, or had other nervous diseases, such as epilepsy, hysteria, tic, eccentricity, neuralgia, chorea, alcoholism, etc.? 24. Did the patient manifest any particularities of temper, habits or pursuits, or predominant passions, religious impressions? Has he been eccentric? 25. Was the patient ever addicted to intemperance in the use of ardent spirits, opium, tobacco, in any form, &c., &c.? 26. Has the patient been subject to any serious bodily disease? To epilepsy, suppressed eruptions, discharges or sores, or ever had any injury to the head? 27. Has restraint or confinement been employed? If so, of what kind, and how long continued? 28. What is supposed to be the cause of the disease? 29. What treatment has been pursued for the relief of the patient? Mention particulars and the effects? 30. Please state any other matter supposed to have any bearing upon the case? 31. For references, address of the nearest relative or guardian, or friend, must be given in full, with place of their residence.

The requirements for admission to a Private Asylum are practically the same, save that it is not necessary to file answers to the above formal questions. They, however, demand in express terms that the two physicians shall have personally examined the person not more than seven clear days previously to the incarceration. (R. S. Q. 3263).

The form of certificate required in this instance is as follows :

FORM OF MEDICAL CERTIFICATE.

I, _____, being a physician duly authorized to practise as such, hereby certify that I have this day, separately from any other medical practitioner, visited and personally examined A. B., the person named in the accompanying statement and orders and that said A. B. is a lunatic (or an insane person, or an idiot, or a person of unsound mind) and a proper person to be confined, and that I have formed this opinion from the following fact (or facts) viz :

(Signed)

Name

Place of abode

Dated at

this

day of

one thousand eight hundred and

(R.S.Q. vol. II, p. 67.)

The same certificate is required for admission to Unlicensed Houses. (R. S. Q. 3267.)

The facts upon which the physician gives his opinion in these certificates may be obtained from his own personal observation and from information received from others. (R. S. Q. 3190.)

No physician being an official visitor to any Private Lunatic Asylum can sign any certificate for admission or attend any inmate professionally, unless directed to visit such inmate by the person upon whose order such patient has been received, or by the Provincial Secretary, or by a judge of the Superior Court, or by the curator appointed to the interdiction of such inmate in the Province (R. S. Q. 3315). The penalty is a fine of \$200. (R. S. Q. 3317.)

It is almost unnecessary to point out that the physician must rigor-

ously conform to the requirements of the law respecting his certificate, for the purpose of avoiding future trouble.

The English Act provides that a medical practitioner who gives a false certificate, or any person not being a registered physician, surgeon or apothecary in actual practice, who gives certificates as such, is declared to be guilty of a misdemeanor. For any such act done by a registered medical practitioner contrary to any of the provisions of the Act (although not declared to be a misdemeanor) he is subjected for each proved offence to a penalty of twenty pounds.

Fortunately for the medical profession in the Province of Quebec, these provisions do not exist in our Statutes. No Statutory penalty is provided for the non-compliance with the formalities of the law respecting either public or private asylums. Nevertheless the physician would be responsible to the patient for whatever damage he might personally cause to him by his fault or negligence in this respect. Apparently no cases have arisen in this Province in which doctor's have been sued for such damages. They might result from such gross negligence as the absence of a *personal* examination or an examination made too long previously to be reliable. In any event it is well to follow the formalities laid down, with the greatest care.

But apart from the mere formalities of the certificate, the physician must state the grounds upon which he decides that the patient is an idiot, imbecile or insane. There can be no great difficulty concerning the two former, I imagine: The question is as to what facts justify a physician in declaring that an individual is "insane and a proper person to be confined," as required by the certificate. I do not propose to enter into a discussion of the vexed question, "What is insanity?" I am aware that the medical profession, from its vantage ground of science, is able to recognize the disease, where the public and the legal mind cannot do so.

It must be clearly borne in mind that the question, at this stage, is not whether the patient would be responsible under the criminal law. That arises after the act is committed. The question rather is, Does society require to be protected from this individual? Is he likely some time or other to become dangerous to himself or others or to create a scandal? It is upon these latter questions that the physician's opinion is thus required.

In this matter, therefore, we are limited to such insanity as in the opinion of the physician warrants the confinement of the individual suffering from it.

For an enumeration of the facts which justify this opinion, I refer to "Taylor's Medical Jurisprudence," pp. 512, 513.

In addition, the formal questions given above, which our Statute requires to be answered by the physician on information given him by the patient's friends and relatives, give an idea of the nature of the facts, which our law expects him to certify to, as the basis of his opinion. As these questions have been given in full above, it is unnecessary to repeat them here.

A clear distinction should be drawn between the facts communicated to him by others and those observed by himself. Such expressions as "thinks" or "believes" should be avoided.

I have already pointed out that great care should be taken in following all the formalities required. Neglect in this respect would amount to legal fault, which entails liability in damages, should any be caused thereby.

If, however, the law asks for an opinion, he who gives it is protected if he has reasonable justification for it.

If the physician gives his opinion upon facts and circumstances generally accepted by the medical profession as evidence of dangerous insanity, or that which might create a scandal, he is free from liability. The farther he strays from this principle and permits his opinions to be influenced by extreme theories of mental responsibility, the greater danger will he incur of the courts refusing to approve it. But if the physician acts without malice, in good faith, and upon facts which reasonably justify his opinion, he need not fear the consequences. More than this it is impossible to say, when thus discussing the matter in a general manner.

(b) *Interdiction.*

Article 325 of our Civil Code reads as follows:

"A person of full age or an emancipated minor, who is in an habitual state of imbecility, insanity or madness must be interdicted even though he has lucid intervals."

The interdiction is declared by the court, judge or prothonotary on the advice of a family council. Evidence is usually adduced before it, and the physician is almost invariably called as a witness. He can speak with great freedom in the witness-box. He is compelled by law to state his opinion. The family council and the judge or prothonotary is not in any way bound by it. If he testifies in good faith, without malice, to the best of his opinion and belief, he has nothing to fear. He has no responsibility.

(2) *Expert Evidence on the Plea of "Insanity," in Criminal Trials.*

To enter into the vast field of Medical Jurisprudence on this subject

in an article of this nature, is impossible. It is interesting, however, to state that Canada to-day is, I believe, the only portion of the British Empire which has the law concerning the criminal responsibility of the insane in a concrete statutory form.

Article 11 of the Criminal Code reads as follows :

1. " No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such act or omission was wrong.

2. " A person labouring under specific delusions, but in other respects sane, shall not be acquitted on the ground of insanity, under the provisions hereinafter contained, unless the delusion caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.

3. " Every one shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved."

Mr. Crankshaw, in his excellent edition of our Criminal Code, thus comments upon this article : " It will be seen by this section that the defence of insanity, in order to be of any avail, must be supported by evidence establishing that the accused committed the offence either

1. While labouring under natural imbecility or disease of the mind to such an extent that he could not appreciate the nature and quality of his act, and could not know that it was wrong, or

2. While labouring under specific delusions causing him though sane in other respects, to believe in the existence of some state of things which, if it existed, would justify or excuse his act.

So that, if the defence be actual insanity, the mere fact of the accused being insane would not of itself be sufficient. It must be shown also that when he committed the offence the accused was insane to so great an extent, as to render him incapable of appreciating the nature and quality of his act and to prevent him from knowing that it was wrong ; and if the defence be that the accused, though sane in other respects, was when he committed the offence labouring under some delusion, it must be shown that the specific delusion under which he was labouring caused him to believe that there then existed a state of things which if it had existed in reality would have justified or excused his act.

Taking the law therefore as here expressed, a man may be insane and still be convicted of an offence. In other words, notwithstanding his insanity, he will be held responsible and punishable, unless his insanity was such that it rendered him incapable of knowing that

what he did was wrong; and although a man may be labouring under some delusion when he commits an offence, he may still be convicted of and punished for that offence, unless the delusion were such that it made him believe that something then existed which, if it had been a reality, would have justified or excused what he did, as for instance a delusion that he was being violently attacked and in danger of being murdered, and that he was obliged in self-defence to kill his supposed antagonist."

Our law as it stands to-day renders useless to the expert in Canada, many of the discussions contained in the text-books. To make his evidence as to fact effective, he must bring it within the principles thus laid down. His own particular theories as to whether, morally speaking, the prisoner should be punished or not, are quite irrelevant.

If I entered more fully into the details of this question, I fear that my remarks would exceed the limits of this paper, perhaps already too lengthy. I therefore content myself with drawing your attention to the text of the law and suggesting its assimilation with text-book lore by each individual reader.

